

Court No. 2

In the High Court of Uttaranchal at Nainital.

**First Appeal From Order No. 620 of 2001.
(Old No. 5 of 1996)**

National Insurance Company Ltd.
through its Administrative Officer,
Divisional Office, Allahabad.

..... Appellant/Opp.party.

Versus

(1) Achint Veer Singh S/o Sri Ciani Nirmal Singh,
R/o Pant Nmarg, Haldwani, District-Nainital.

..... Claimant –Opp.Party

(2) Mohan Singh Mair S/o Sri Sachi Singh
R/o Pearsonganj, Haldwani, District-Nainital.

..... Respondent/Opp.Party

Sri D.S.Patni, learned counsel for the appellant.

Sri Amit Bhatt, learned counsel for the claimant.

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Dated: 12th Aug., 2004.

Hon'ble P.C.Verma,J.

Hon'ble B.S.Verma,J.

This appeal has been filed by the appellant-National Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 16.08.1994 passed by Motor Accident Claims Tribunal/III Additional District Judge, Nainital in Motor Accident Claim Case No. 230 of 1986, whereby the Motor Accident Claim Tribunal (hereinafter referred to as the Tribunal) awarded Rs. 4,00,000/- as compensation against the appellant-National Insurance Company Ltd. alongwith interest at the rate of 12% per annum from the date of application till the date of payment.

Brief facts of the case giving rise to the present appeal are that on 25.03.1986 at about 9.00 p.m. Truck No. USR 6981 hit the scooter of the claimant when he was going to the house of Tula Singh to leave him there. In this accident, claimant sustained grievous injuries on his hands and leg for which he was operated several times in Ganga Ram Hospital, Delhi and incurred Rs. 1,50,000/- on his treatment. Due to injuries he could not do his business and he suffered loss for which he is entitled to get compensation of Rs. 6,00,000/-.

The appeal was filed only on the ground that the appellant-Insurance Company had only statutory liability of Rs. 1,50,000/- while the award has been made by the Tribunal for Rs. 4,00,000/-. The learned counsel for the appellant submits that in view of the judgment of Apex Court in ***New India Assurance Co. Ltd. versus C.M. Jaya and others, reported in (2002) 2 Supreme Court Cases 278***, the Insurance Company is liable to pay the statutory liability, which comes to Rs. 1,50,000/-. Rest of the amount of award is to be paid by the owner of the vehicle in question. The owner was party before the Tribunal. The Tribunal has not bifurcated the amount. Therefore, we allow the appeal and provide that Rs. 1,50,000/- as statutory compensation alongwith interest shall be paid by the appellant-National Insurance Company Ltd. and rest of the payment shall be made by the owner of the vehicle in question. However, we do not find any infirmity or illegality in the impugned order on the basis of evidence on record in determining the compensation payable to the injured-claimant.

Therefore, the compensation awarded by the impugned order is hereby affirmed. The appeal is partly

allowed. The case is sent back to the Tribunal for bifurcation of the amount to be paid to the injured-claimant by the Insurance Company and owner of the vehicle in question as per provisions of the old Act. The Tribunal concerned shall decide the matter, after issuing the notice to the owner of the vehicle in question, within two months from the date of receipt of certified copy of this order. Sri D.S.Patni, learned counsel for the appellant-National Insurance Company Ltd. undertakes to ensure that the Insurance Company will place the order of this Court to the Tribunal concerned within fifteen days from today.

The amount already deposited in this case towards the compensation shall be released forthwith in favour of the injured-claimant.

(B.S.Verma,J.)

(P.C.Verma,J.)

P.Singh